



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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45 North Hill Drive
Suite 100
Warrenton, VA 20186

NOV 20 2013

RE: MUR 6675
Vernon Parker for Congress and Kelly
Lawler in her official capacity as treasurer

Dear Messrs. Torchinsky, Bayes, and Sheehy:

On November 1, 2012, the Federal Election Commission notified your clients, Vernon Parker for Congress and Kelly Lawler in her official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 7, 2013, the Commission dismissed the allegation that the Committee violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Jin Lee, the attorney assigned to this matter at (202) 694-1650.

Sincerely,


Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Vernon Parker for Congress and
Kelly Lawler in her official capacity as treasurer

MUR 6675

I. INTRODUCTION

This matter involves allegations that Vernon Parker for Congress and Kelly Lawler in her official capacity as treasurer (the "Committee") violated the Federal Election Campaign Act, as amended (the "Act"), by failing to include an appropriate disclaimer in automated phone calls the Committee funded. Compl. at 1. The Complaint specifically alleges that the Committee conducted a telephone "push poll" that provided a negative message about Parker's opponent, Kyrsten Sinema. *Id.* The Complaint argues that, as a public communication, such calls require a disclaimer under the Act and Commission regulations. *Id.*

The Response acknowledges that it paid for the automated calls but contends the calls are not a "public communication" because they constitute a poll rather than a telephone bank and thus require no disclaimer. Resp. at 2-3. Furthermore, the Response states that the Committee spent only \$500 on the calls and Parker ultimately lost the election. *Id.* at 1, 5. Accordingly, the Response argues that the Commission should either find no reason to believe that it violated the Act — given that the calls did not require a disclaimer — or dismiss this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). *Id.* at 5.

As set forth below, given the small scope of the activity, the Commission exercises its prosecutorial discretion and dismisses this matter. *See Heckler*, 470 U.S. at 821.

II. FACTUAL BACKGROUND

Vernon Parker was a candidate for the United States House of Representatives in Arizona's 9th Congressional District in 2012. Parker designated Vernon Parker for Congress as

1 his principal campaign committee. *See* Statement of Candidacy (Apr. 13, 2012). Kyrsten
2 Sinema was his opponent. Parker lost the general election held on November 6, 2012.

3 On October 15, 2012, the Committee placed 6,596 automated calls to likely voters in the
4 relevant congressional district. *See* Compl. at 1; Resp. at 4. The first question posed in the calls
5 asked recipients for whom they intended to vote, instructing them to press 1 for Republican
6 Vernon Parker, 2 for Democrat Kyrsten Sinema, or 3 if undecided. Resp. at 4. The second
7 question began by informing recipients that Sinema once served as a criminal defense attorney
8 and had represented “murderers” and then asked “Do you think Sinema should release her client
9 list?” Compl. at 1; Resp. at 4. Of the 6,596 calls, the Response states that 596 recipients
10 responded to the first question, and 480 responded to the second. Resp. at 4. The Committee
11 later reported that while 44.6% of the respondents stated that they would vote for Parker and
12 41.7% stated that they would vote for Sinema, 63% of respondents stated that Sinema should
13 release her client list. *Id.* at 5.

14 The Complaint alleges that the calls constituted a “public communication” but failed to
15 include a disclaimer stating who had paid for them. Compl. at 1. The Complaint further asserts
16 that on October 16, 2012, the day after the calls were placed, the Committee posted a press
17 release on its Facebook page claiming that the calls showed Parker leading the race and that a
18 majority of voters wanted Sinema to disclose her client list. *Id.* at 1, Ex. 1.

19 The Response concedes that the Committee paid for the calls. Resp. at 4. It also
20 acknowledges that the calls omitted a disclaimer. *Id.* at 1, 4. The Response contends that these
21 calls required no disclaimer because the calls did not constitute “political advertising” or a
22 “public communication.” *Id.* at 1, 3-4. The Response asserts that the calls were “legitimate
23 polling” designed to test a potential campaign message, the results of which shaped Parker’s

1 campaign message in the weeks before the election. *Id.* at 4-5. Alternatively, the Response
2 argues that the matter should be dismissed because the total cost of the calls was \$500. *Id.* at 5.

3 Given the small scope of the activity – 6,956 calls at the cost of \$500 – pursuing this
4 matter with an investigation would not be an efficient use of the Commission's resources.
5 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegation
6 that the Committee violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1) by failing to
7 include an appropriate disclaimer in a public communication. *See Heckler*, 470 U.S. at 821.
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